From: Phil Tomson
To: Microsoft ATR
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Subject: Microsoft Settlement

To: Renata B. Hesse
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Under the Tunney Act's provision for public comment I would like to comment on the proposed Microsoft settlement.

I have been involved in the computing industry as an engineer since 1984. For the last eight years I have been a software engineer. During this time I witnessed firsthand how the rise of Microsoft's monopoly in the operating system market adversly affected the software industry by limiting choices.

Microsoft has been found guilty of anitcompetitive practices and illegally maintaining a monopoly. The proposed settlement effectively does nothing to stop Microsoft's anticompetitive practices and in fact I fear that it will actually give Microsoft the cover of legal authority to continue such practices in even greater amounts. If the proposed settlement is approved unchanged it will have grave negative consequences for the computing and software industries as well as for access to the Internet. These industries are key to the US economy and this settlement effectively hands them over to Microsoft.

The proposed settlement could be fixed with the following requirements:
* Require Microsoft to make it's office suite data file formats public. This would allow competing companies and organizations to create products which can interoperate with Microsoft's office suite, thus allowing competing operating systems to have applications which can read and write these formats which are now ubiquitous due to Microsotf's monopoly.
* Require Microsoft to submit present and future (perhaps for a period of ten years) networking protocols to an independent open standards body. This would prevent Microsoft from creating incompatible netoworking protocols that would shut out competitor's access to the Internet.
* Require Microsoft's preload agreements to be vacated and prohibit the creation of new preload agreements.
* Require the Windows OS API (Application Programmer's Interface) to be publicly documented. This would allow the development of competing products that could interoperate with Windows. It would also expose certain portions of the API which Microsoft has kept secret up to this point. And this provision should apply to ALL versions of Windows, including Windows XP and WinCE (which are not covered in the current agreement).
* Require Microsoft to list which software patents protect the Windows API so

that developers of Windows-compatible operating systems can determine what is patented and avoid infringing.
* Require that Microsoft change their EULAs to not discriminate against ISVs that distribute Open Source software. Many of Microsoft SDK (Software Development Kit) EULAs prohibit their use with Open Source (freely available under certain licenses like the GPL (GNU General Public License)). This type of discrimination should be eliminated.

And finally, the current agreement appears to lack an effective enforcement mechanism. It does provide for the creation of a Technical Committee with investigative powers, but appears to leave all actual enforcement to the legal system. The agreement needs to be ammended so that it has an effective enforcement mechanism that is invoked when Microsoft breaks the agreement.

This is a matter of utmost importance. If the current agreement is not changed, it will effectively hand over large portions of the computing industry and the Internet over to Microsoft's control - this would be a very tragic outcome and it is avoidable.

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